

AMENDED IN SENATE JANUARY 25, 2007

SENATE BILL

No. 40

Introduced by Senator Romero

December 20, 2006

An act to ~~add Article 6.6 (commencing with Section 110808) to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, relating to food; amend, repeal, and add Section 1170 of the Penal Code, relating to sentencing and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 40, as amended, Romero. ~~Food; trans fats; Sentencing.~~

Existing law establishes various felonies punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper terms. Existing law requires the court to impose the middle term, unless there are circumstances in mitigation or aggravation of the crime.

This bill would instead provide that the choice of the appropriate term would rest within the sound discretion of the court. The bill would make other nonsubstantive changes. This bill would provide that these changes would be repealed on January 1, 2009.

This bill would declare that it is to take effect immediately as an urgency statute.

~~The Sherman Food, Drug, and Cosmetic Act contains various provisions regarding the contents, packaging, labeling, and advertising of food, drugs, and cosmetics. The State Department of Health Services administers and enforces the act. Effective July 1, 2007, these duties shall be transferred to the State Department of Public Health.~~

~~This bill would require every food facility to maintain on the premises the manufacturer's documentation or label for any food or food additive that is or includes any fat, oil, or shortening, for as long as this food or food additive is stored, distributed, or served by, or used in the preparation of food within, the food facility. The bill would require the manufacturer's documentation to be authorized by the department and to disclose specified information.~~

~~This bill would also, on and after July 1, 2008, prohibit any food containing artificial trans fat, as specified, from being stored, distributed, or served by, or used in the preparation of any food within, a food facility. The bill would exempt from this prohibition, food sold or served in a manufacturer's original sealed package.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *It is the intent of the Legislature in enacting this*
2 *provision to respond to the decision of the United States Supreme*
3 *Court in Cunningham v. California, No. 05-6551, 2007 U.S. Lexis*
4 *1324. It is the further intent of the Legislature to maintain stability*
5 *in California's criminal justice system while the criminal justice*
6 *and sentencing structures in California sentencing are being*
7 *reviewed.*
8 SEC. 2. *Section 1170 of the Penal Code is amended to read:*
9 1170. (a) (1) The Legislature finds and declares that the
10 purpose of imprisonment for crime is punishment. This purpose
11 is best served by terms proportionate to the seriousness of the
12 offense with provision for uniformity in the sentences of offenders
13 committing the same offense under similar circumstances. The
14 Legislature further finds and declares that the elimination of
15 disparity and the provision of uniformity of sentences can best be
16 achieved by determinate sentences fixed by statute in proportion
17 to the seriousness of the offense as determined by the Legislature
18 to be imposed by the court with specified discretion.
19 (2) Notwithstanding paragraph (1), the Legislature further finds
20 and declares that programs should be available for inmates,
21 including, but not limited to, educational programs, that are
22 designed to prepare nonviolent felony offenders for successful
23 reentry into the community. The Legislature encourages the

development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections *and Rehabilitation* is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the ~~Director of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation*. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the ~~Director of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation*.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, ~~the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime~~ *the choice of the appropriate term shall rest within the sound discretion of the court*. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the ~~Director of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation*, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the ~~Director of Corrections~~ *secretary* or the Board of ~~Prison Terms Parole Hearings~~, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity

1 of sentences and to promote uniformity of sentencing. Credit shall
2 be given for time served.

3 (e) (1) Notwithstanding any other law and consistent with
4 paragraph (1) of subdivision (a) of Section 1170, if the ~~Director~~
5 ~~of Corrections~~ *Secretary of the Department of Corrections and*
6 *Rehabilitation* or the Board of ~~Prison Terms Parole Hearings~~ or
7 both determine that a prisoner satisfies the criteria set forth in
8 paragraph (2), the ~~director~~ *secretary* or the board may recommend
9 to the court that the prisoner's sentence be recalled.

10 (2) The court shall have the discretion to resentence or recall if
11 the court finds both of the following:

12 (A) The prisoner is terminally ill with an incurable condition
13 caused by an illness or disease that would produce death within
14 six months, as determined by a physician employed by the
15 department.

16 (B) The conditions under which the prisoner would be released
17 or receive treatment do not pose a threat to public safety.

18 The Board of ~~Prison Terms Parole Hearings~~ shall make findings
19 pursuant to this subdivision before making a recommendation for
20 resentence or recall to the court. This subdivision does not apply
21 to a prisoner sentenced to death or a term of life without the
22 possibility of parole.

23 (3) Within 10 days of receipt of a positive recommendation by
24 the ~~director~~ *secretary* or the board, the court shall hold a hearing
25 to consider whether the prisoner's sentence should be recalled.

26 (4) The prisoner or his or her family member or designee may
27 request consideration for recall and resentencing by contacting the
28 chief medical officer at the prison or the ~~Director of Corrections~~
29 *Secretary of the Department of Corrections and Rehabilitation*.
30 Upon receipt of the request, if the ~~director~~ *secretary* determines
31 that the prisoner satisfies the criteria set forth in paragraph (2), the
32 ~~director~~ *secretary* or board may recommend to the court that the
33 prisoner's sentence be recalled. The ~~director~~ *secretary* shall submit
34 a recommendation for release within 30 days in the case of inmates
35 sentenced to determinate terms and, in the case of inmates
36 sentenced to indeterminate terms, the ~~director~~ *secretary* may make
37 a recommendation to the Board of ~~Prison Terms Parole Hearings~~
38 with respect to the inmates who have applied under this section.
39 The board shall consider this information and make an independent
40 judgment pursuant to paragraph (2) and make findings related

1 thereto before rejecting the request or making a recommendation
2 to the court. This action shall be taken at the next lawfully noticed
3 board meeting.

4 (5) Any recommendation for recall submitted to the court by
5 the ~~Director of Corrections~~ *Secretary of the Department of*
6 *Corrections and Rehabilitation* or the Board of ~~Prison Terms~~
7 *Parole Hearings* shall include one or more medical evaluations,
8 a postrelease plan, and findings pursuant to paragraph (2).

9 (6) If possible, the matter shall be heard before the same judge
10 of the court who sentenced the prisoner.

11 (f) Any sentence imposed under this article shall be subject to
12 the provisions of Sections 3000 and 3057 and any other applicable
13 provisions of law.

14 (g) A sentence to state prison for a determinate term for which
15 only one term is specified, is a sentence to state prison under this
16 section.

17 (h) *This section shall remain in effect only until January 1,*
18 *2009, and as of that date is repealed, unless a later enacted statute,*
19 *that is enacted before that date, deletes or extends that date.*

20 SEC. 3. Section 1170 is added to the Penal Code, to read:

21 1170. (a) (1) *The Legislature finds and declares that the*
22 *purpose of imprisonment for crime is punishment. This purpose*
23 *is best served by terms proportionate to the seriousness of the*
24 *offense with provision for uniformity in the sentences of offenders*
25 *committing the same offense under similar circumstances. The*
26 *Legislature further finds and declares that the elimination of*
27 *disparity and the provision of uniformity of sentences can best be*
28 *achieved by determinate sentences fixed by statute in proportion*
29 *to the seriousness of the offense as determined by the Legislature*
30 *to be imposed by the court with specified discretion.*

31 (2) *Notwithstanding paragraph (1), the Legislature further finds*
32 *and declares that programs should be available for inmates,*
33 *including, but not limited to, educational programs, that are*
34 *designed to prepare nonviolent felony offenders for successful*
35 *reentry into the community. The Legislature encourages the*
36 *development of policies and programs designed to educate and*
37 *rehabilitate nonviolent felony offenders. In implementing this*
38 *section, the Department of Corrections and Rehabilitation is*
39 *encouraged to give priority enrollment in programs to promote*
40 *successful return to the community to an inmate with a short*

1 remaining term of commitment and a release date that would allow
2 him or her adequate time to complete the program.

3 (3) In any case in which the punishment prescribed by statute
4 for a person convicted of a public offense is a term of imprisonment
5 in the state prison of any specification of three time periods, the
6 court shall sentence the defendant to one of the terms of
7 imprisonment specified unless the convicted person is given any
8 other disposition provided by law, including a fine, jail, probation,
9 or the suspension of imposition or execution of sentence or is
10 sentenced pursuant to subdivision (b) of Section 1168 because he
11 or she had committed his or her crime prior to July 1, 1977. In
12 sentencing the convicted person, the court shall apply the
13 sentencing rules of the Judicial Council. The court, unless it
14 determines that there are circumstances in mitigation of the
15 punishment prescribed, shall also impose any other term that it is
16 required by law to impose as an additional term. Nothing in this
17 article shall affect any provision of law that imposes the death
18 penalty, that authorizes or restricts the granting of probation or
19 suspending the execution or imposition of sentence, or expressly
20 provides for imprisonment in the state prison for life. In any case
21 in which the amount of preimprisonment credit under Section
22 2900.5 or any other provision of law is equal to or exceeds any
23 sentence imposed pursuant to this chapter, the entire sentence
24 shall be deemed to have been served and the defendant shall not
25 be actually delivered to the custody of the Secretary of Corrections
26 and Rehabilitation. The court shall advise the defendant that he
27 or she shall serve a period of parole and order the defendant to
28 report to the parole office closest to the defendant's last legal
29 residence, unless the in-custody credits equal the total sentence,
30 including both confinement time and the period of parole. The
31 sentence shall be deemed a separate prior prison term under
32 Section 667.5, and a copy of the judgment and other necessary
33 documentation shall be forwarded to the secretary.

34 (b) When a judgment of imprisonment is to be imposed and the
35 statute specifies three possible terms, the court shall order
36 imposition of the middle term, unless there are circumstances in
37 aggravation or mitigation of the crime. At least four days prior to
38 the time set for imposition of judgment, either party or the victim,
39 or the family of the victim if the victim is deceased, may submit a
40 statement in aggravation or mitigation to dispute facts in the record

1 or the probation officer's report, or to present additional facts. In
2 determining whether there are circumstances that justify imposition
3 of the upper or lower term, the court may consider the record in
4 the case, the probation officer's report, other reports including
5 reports received pursuant to Section 1203.03 and statements in
6 aggravation or mitigation submitted by the prosecution, the
7 defendant, or the victim, or the family of the victim if the victim is
8 deceased, and any further evidence introduced at the sentencing
9 hearing. The court shall set forth on the record the facts and
10 reasons for imposing the upper or lower term. The court may not
11 impose an upper term by using the fact of any enhancement upon
12 which sentence is imposed under any provision of law. A term of
13 imprisonment shall not be specified if imposition of sentence is
14 suspended.

15 (c) The court shall state the reasons for its sentence choice on
16 the record at the time of sentencing. The court shall also inform
17 the defendant that as part of the sentence after expiration of the
18 term he or she may be on parole for a period as provided in Section
19 3000.

20 (d) When a defendant subject to this section or subdivision (b)
21 of Section 1168 has been sentenced to be imprisoned in the state
22 prison and has been committed to the custody of the Secretary of
23 Corrections and Rehabilitation, the court may, within 120 days of
24 the date of commitment on its own motion, or at any time upon the
25 recommendation of the secretary or the Board of Parole Hearings,
26 recall the sentence and commitment previously ordered and
27 resentence the defendant in the same manner as if he or she had
28 not previously been sentenced, provided the new sentence, if any,
29 is no greater than the initial sentence. The resentence under this
30 subdivision shall apply the sentencing rules of the Judicial Council
31 so as to eliminate disparity of sentences and to promote uniformity
32 of sentencing. Credit shall be given for time served.

33 (e) (1) Notwithstanding any other law and consistent with
34 paragraph (1) of subdivision (a) of Section 1170, if the Secretary
35 of Corrections and Rehabilitation or the Board of Parole Hearings
36 or both determine that a prisoner satisfies the criteria set forth in
37 paragraph (2), the secretary or the board may recommend to the
38 court that the prisoner's sentence be recalled.

39 (2) The court shall have the discretion to resentence or recall
40 if the court finds both of the following:

1 (A) *The prisoner is terminally ill with an incurable condition*
2 *caused by an illness or disease that would produce death within*
3 *six months, as determined by a physician employed by the*
4 *department.*

5 (B) *The conditions under which the prisoner would be released*
6 *or receive treatment do not pose a threat to public safety.*

7 *The board shall make findings pursuant to this subdivision before*
8 *making a recommendation for resentencing or recall to the court.*
9 *This subdivision does not apply to a prisoner sentenced to death*
10 *or a term of life without the possibility of parole.*

11 (3) *Within 10 days of receipt of a positive recommendation by*
12 *the secretary or the board, the court shall hold a hearing to*
13 *consider whether the prisoner's sentence should be recalled.*

14 (4) *The prisoner or his or her family member or designee may*
15 *request consideration for recall and resentencing by contacting*
16 *the chief medical officer at the prison or the secretary. Upon*
17 *receipt of the request, if the secretary determines that the prisoner*
18 *satisfies the criteria set forth in paragraph (2), the secretary or*
19 *board may recommend to the court that the prisoner's sentence*
20 *be recalled. The secretary shall submit a recommendation for*
21 *release within 30 days in the case of inmates sentenced to*
22 *determinate terms and, in the case of inmates sentenced to*
23 *indeterminate terms, the secretary may make a recommendation*
24 *to the board with respect to the inmates who have applied under*
25 *this section. The board shall consider this information and make*
26 *an independent judgment pursuant to paragraph (2) and make*
27 *findings related thereto before rejecting the request or making a*
28 *recommendation to the court. This action shall be taken at the next*
29 *lawfully noticed board meeting.*

30 (5) *Any recommendation for recall submitted to the court by*
31 *the secretary or the board shall include one or more medical*
32 *evaluations, a postrelease plan, and findings pursuant to paragraph*
33 *(2).*

34 (6) *If possible, the matter shall be heard before the same judge*
35 *of the court who sentenced the prisoner.*

36 (f) *Any sentence imposed under this article shall be subject to*
37 *the provisions of Sections 3000 and 3057 and any other applicable*
38 *provisions of law.*

1 (g) A sentence to state prison for a determinate term for which
2 only one term is specified, is a sentence to state prison under this
3 section.

4 (h) This section shall become operative on January 1, 2009.

5 SEC. 4. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to respond to the United States Supreme Court decision
10 in *Cunningham v. California* and provide for stability in
11 California's criminal justice system, it is necessary that this act
12 take effect immediately.

13 SECTION 1. ~~Article 6.6 (commencing with Section 110808)~~
14 ~~is added to Chapter 5 of Part 5 of Division 104 of the Health and~~
15 ~~Safety Code, to read:~~

16
17 Article 6.6. Trans Fats
18

19 ~~110808. (a) Every food facility shall maintain on the premises~~
20 ~~the manufacturer's documentation or label for any food or food~~
21 ~~additive that is or includes any fat, oil, or shortening, for as long~~
22 ~~as this food or food additive is stored, distributed, or served by, or~~
23 ~~used in the preparation of food within, the food facility. The label~~
24 ~~described in this subdivision refers to the label that is required by~~
25 ~~applicable federal and state law to be on the food or food additive~~
26 ~~at the time of purchase by the food facility. The manufacturer's~~
27 ~~documentation may be maintained in lieu of the label. The~~
28 ~~manufacturer's documentation shall be maintained whenever the~~
29 ~~label is not required by federal and state law on the food or food~~
30 ~~additive that is or includes any fat, oil, or shortening. The~~
31 ~~manufacturer's documentation described in this subdivision shall~~
32 ~~be authorized by the department and disclose one or both of the~~
33 ~~following:~~

34 (1) ~~The trans fat content of the food or food additive.~~

35 (2) ~~Whether a food or food additive is or includes margarine,~~
36 ~~vegetable shortening, or any kind of partially hydrogenated~~
37 ~~vegetable oil.~~

38 (b) (1) ~~On and after July 1, 2008, no food containing artificial~~
39 ~~trans fat may be stored, distributed, or served by, or used in the~~
40 ~~preparation of any food within, a food facility.~~

1 ~~(2) Paragraph (1) shall not apply to food sold or served in a~~
2 ~~manufacturer's original, sealed package.~~

3 ~~(e) For purposes of this section, a food contains artificial trans~~
4 ~~fat if the food contains vegetable shortening, margarine, or any~~
5 ~~kind of partially hydrogenated vegetable oil, unless the~~
6 ~~manufacturer's documentation or the label required on the food,~~
7 ~~pursuant to applicable federal and state law, lists the trans fat~~
8 ~~content as less than 0.5 grams per serving.~~

9 ~~(d) For purposes of this section, food facility has the same~~
10 ~~meaning as in Section 113789.~~

11 ~~(e) Section 111825 shall not apply to a violation of this section.~~